IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA

AUGUSTA DIVISION

	ORDER	
Respondent.) 	
UNITED STATES OF AMERICA,)	
)	(Formerly CR 111-365)
v.)	CV 115-023
Petitioner,)	
JULIAN KENNETH HARDIN,)	

After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation, to which no objections have been filed. The Magistrate Judge correctly determined that Petitioner's request for resentencing under Amendment 782 seeks relief under 18 U.S.C. § 3582, not 28 U.S.C. § 2255, and Petitioner's second or successive § 2255 challenge to his marijuana manufacturing charge has not been authorized by the Eleventh Circuit Court of Appeals. Accordingly, the Court **ADOPTS** the Report and Recommendation of the Magistrate Judge as its opinion. Therefore, the Court **DISMISSES** the above-captioned motion to vacate.

Further, a federal prisoner must obtain a certificate of appealability ("COA") before appealing the denial of his motion to vacate. This Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rule 11(a) to the Rules Governing Section 2255 Proceedings. This Court should grant a COA only if the prisoner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). For the

reasons set forth in the Report and Recommendation, and in consideration of the standards enunciated in <u>Slack v. McDaniel</u>, 529 U.S. 473, 482-84 (2000), Petitioner has failed to make the requisite showing. Accordingly, the Court **DENIES** a COA in this case. Moreover, because there are no non-frivolous issues to raise on appeal, an appeal would not be taken in good faith. Accordingly, Petitioner is not entitled to appeal *in forma pauperis*. See 28 U.S.C. § 1915(a)(3).

Upon the foregoing, the Court CLOSES this civil action.

SO ORDERED this 27 day of March, 2015, at Augusta, Georgia.

HONORABLE J. RANDAL HALL UNITED STATES DISTRICT JUDGE SOUTHERN DISTRICT OF GEORGIA

¹"If the court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22." Rule 11(a) to the Rules Governing Section 2255 Proceedings.